

Closing down a company: Strike Off or Wind Up?

Company closures have increased significantly, mainly precipitated by the economic downturn and rapid market changes. When the business of a company reaches the stage of closure, the business of a company will gradually stop being operational and eventually become inactive. Well, you may call this business dead business. So what happens next?

In these circumstances, the directors of such a company need to decide on a suitable means for cessation. There are two common methods for closure of a company, which are:


1. STRIKING OFF
2. WINDING UP

Should I strike off or wind up my company? What is the difference between these two methods? These questions will definitely arise in the mind of affected directors. Directors of a “dead” company need to make a smart move in deciding the most appropriate method for closure of a company. Pursuant to the Companies Act 1965 (CA 1965), there are differences between winding up and striking off as seen in the table.

Striking off a company

Striking off a company requires you to make an application to Suruhanjaya Syarikat Malaysia (SSM) in accordance with Section 308 of CA 1965. Many say that striking off a company is a simple and efficient way of closing down a company. However, there are some criteria that need to be fulfilled prior to striking off a company, which may make striking off not an easy process.

After taking into consideration all the



To strike off, a company:

- i) must be dormant and not in operation;
- ii) must get consent from the majority of the shareholders;
- iii) has no assets and liabilities;
- iv) has no bank account;
- v) has no outstanding tax or other liabilities including compound with any government bodies such as EPF, SOCSO etc.;
- vi) has no outstanding penalties or compound due to SSM under CA 1965;
- vii) has updated the latest information with SSM;
- viii) is not involved in any legal proceedings within or outside Malaysia;
- ix) does not have any charges in the Register of Charges;
- x) has not made any return of capital to shareholders;
- xi) is not a holding company or subsidiary of another corporate body;
- xii) is not a Guarantor Corporation.

above-mentioned criteria, you may have changed your mind, right? If your company is big previously, you will need to resolve many things which probably will require a lot of your time. Furthermore, if

your company still has assets (e.g. buildings or land) or liabilities (e.g. amounts owing to government agencies such as IRB, EPF & SOCSO), these assets need to be disposed off first and all the liabili-

ties are required to be settled prior to proceeding to the striking off, because one of the important criteria of striking off a company is to ensure that there are no balances in the accounts of the assets and liabilities of the company.

One of the benefits of striking off a company is that directors of a company are allowed to change their mind regarding the previous closure of their company. Directors can apply to the Court for recommencement of their business within 15 years after the name of their company has been struck off as provided under Section 308(5) of CA 1965.

In order to ease the striking off procedure, SSM has provided an online service on their website where the applicant can view the status of the striking off application. In addition, SSM has provided some guidelines and practice notes for striking off a company, such as:

- Guidelines on Application to Strike Off the Name of a Company issued on 12 January 2007
- Practice Note 5/2009 – The Filing of Objections Pursuant to a Claim of Amount Due and Owning Against a Company Undergoing a Striking Off Process issued on 21 July 2009
- Practice Note 6/2010 – Guidelines for the Application to Strike Off a Company Which is Being Wound-Up.

Winding up a company

Another method of closing down a company can be carried out in accordance with Section 257 of CA 1965. The winding up of a company is known as 'liquidation'. In other words, winding up or liquidation is the process by which a company is brought to an end whereby the assets and property of the company will be redistributed. The responsibility of winding up of a company lies with the liquidator. When a liquidator has already been appointed, all the powers of directors and shareholders shall cease. The liquidator will take charge to ensure that the company is properly dissolved.

The court-ordered winding up is where the winding up process of an insol-

vent company is triggered by a court on the application of one or more parties. The process of winding up the affairs of a company is carried out by the Official Receiver, currently known as the Director General of Insolvency or a liquidator. This type of winding up of a company requires the petitioner to state the grounds of winding up of a company as set out in Section 218(1) of CA 1965. The circumstances that may direct a company to be dissolved by court order include:

- i) The company is unable to pay debts owing to financial institutions, suppliers or any other related entities
- ii) One or more of its directors has acted in his/her personal interest or unjustly to other directors or acted against the interest of the company and has been served a court order.
- iii) The court is convinced that it is equitable that this company should be dissolved.
- iv) The number of directors or shareholders is reduced to one (a private

limited company in Malaysia requires two or more shareholders).

- v) No business operations have been started since the day of registration (period of one year) or business operations are suspended for one year.
- vi) Where the M&A (Memorandum and Articles of Association) of the company sets an expiry date for the business.

The Members' Voluntary Liquidation (MVL) is the liquidation of a solvent company where the directors must form an opinion that the company will be able to pay its debts in full within a period of twelve (12) months after the commencement of winding up of a company in accordance with Section 257 of CA 1965. Once the liquidation is commenced, it will be advertised in the local newspaper in order to inform the public about the status of the company.

Based on the details as shared above, I believe you know your choices when dealing with the closure of a company. ■



There are two types of winding up:

- Court-Ordered Winding Up (also known as Compulsory Winding Up)
- Members' Voluntary Liquidation (MVL or also known as Voluntary Winding Up)

